RECORD AND BRIEFS

Supreme Court, U.S.
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No. 16-605

IN THE

Supreme Court of the United States

TOWN OF CHESTER,

Petitioner,

v.

LAROE ESTATES, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether intervenors participating in a lawsuit as of right under Federal Rule of Civil Procedure 24(a) must have Article III standing, or whether Article III is satisfied so long as there is a valid case or controversy between the named parties.

PARTIES TO THE PROCEEDING

The parties to the proceeding below are identified in the caption to the case.

RULE 29.6 DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Laroe Estates, Inc., discloses that it is a privately held corporation that has no parent corporation and no publicly traded stock, and no publicly held company owns more than 10% of its stock.

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INTRODUCTION

More than a decade ago, Steven Sherman attempted to secure approval from Petitioner, the Town of Chester, to subdivide and develop a large piece of property. But whenever Sherman came close to satisfying the Town's requirements, the Town changed the criteria. The costs associated with the Town's constantly shifting requirements forced Sherman to sell his property to Respondent, Laroe Estates, Inc. Sherman also filed this lawsuit alleging that the Town's conduct constituted a regulatory taking. Laroe subsequently moved to intervene based on its interest in the property. Although Sherman's standing to assert the takings claim is undisputed, Petitioner claims that Laroe is not entitled to intervene unless it first establishes that it independently has standing. The Second Circuit properly rejected Petitioner's argument. That judgment does not warrant this Court's review.

First, Petitioner overstates the importance of the question presented. Petitioner's own authorities confirm that an entity's Article III standing or lack thereof is seldom dispositive of its ability to intervene. This Court should not devote its resources to a largely academic question that has little practical significance.

Second, this case is a poor vehicle because it is unclear whether the question presented has any impact on Respondent's ability to intervene. Neither the Second Circuit nor the District Court has determined whether Respondent satisfies Rule 24(a); the District Court is currently considering that question on remand. While Respondent believes that

it fulfills Rule 24(a)'s requirements, the courts below may not agree. And if they conclude that Respondent fails Rule 24(a), the question whether intervenors must also possess standing will be moot. Review of the question presented at this interlocutory stage is therefore premature.

STATEMENT

A. The Town Prevents Sherman From Developing His Land

In 2000, Steven Sherman applied to the Town of Chester for approval to subdivide a nearly 400-acre piece of land he had purchased for $2.7 million ("MareBrook"). *See Sherman v. Town of Chester*, 752 F.3d 554, 557 (2d Cir. 2014). "That application marked the beginning of his journey through the Town's ever-changing labyrinth of red tape." *Id.*

The Town enacted a new zoning ordinance in 2003 that required Sherman to redraft his proposed development plan. *See id.* Just as Sherman completed his new proposal, the Town changed its regulations again—a pattern the Town then repeated multiple times, forcing Sherman to recreate his proposal each time. *See id.* "On top of the shifting sands of zoning regulations, the Town erected even more hurdles," including "announc[ing] a moratorium on development, replac[ing] its officials, and requir[ing] Sherman to resubmit studies that he had already completed." *Id.* Every time Sherman came close to fulfilling the Town's latest requirement, the Town imposed a new one.

B. Running Out Of Funds, Sherman Sells His Property To Laroe

After a decade of attempting to comply with the Town's constantly evolving demands, Sherman had spent more than $5.5 million. *See Sherman*, 752 F.3d at 557. And there was still "no end in sight." *Id.* Along the way, Sherman turned to Laroe, which signed agreements with Sherman regarding MareBrook in 2003 and 2013. Pet. App. 3a-4a. The combined effect of the two agreements was that Laroe purchased MareBrook from Sherman for $2.5 million, subject to a provision requiring Laroe to transfer some lots back to Sherman depending on the number of lots the Town ultimately approved. *See id.*

C. Sherman Sues The Town

Meanwhile, the Town continued to prolong the approval process. In January 2012, Sherman sued the Town, alleging, among other things, that its repeated amendments of its zoning laws wrongfully prevented him from developing MareBrook and constituted a regulatory taking.[1] *See* Pet. App. 21a. The District Court dismissed Sherman's regulatory-takings claim as unripe because the Town had not yet reached a final decision on the development

[1] Sherman initially sued the Town in 2008 in federal court, but "[t]he Town unfairly manipulated the litigation of the case." *Sherman*, 752 F.3d at 560, 568-69. The Town moved to dismiss the case because Sherman had not "alleged that he sought and was denied just compensation by an available state procedure." *Id.* at 563-64. Then, when Sherman voluntarily dismissed his federal case and filed his claims in state court, the Town "removed the case [back to federal court] and ... [again] moved to dismiss on the ground that the takings claim must be heard in state court." *Id.* at 564, 569.

project. *See* Pet. App. 23a. Sherman appealed. He passed away while that appeal was pending, and his widow, Nancy J. Sherman, was substituted in the litigation as his personal representative. *See Sherman*, 752 F.3d at 560.

The Second Circuit reversed the dismissal of the takings claim. *See* Pet. App. 24a. It found that "[s]eeking a final decision [from the Town] would be futile" because "the finish line will always be moved just one step away until Sherman collapses." *Sherman*, 752 F.3d at 563. Moreover, Sherman's allegations about the Town's conduct—"singl[ing] out Sherman's development" and "suffocating him with red tape to make sure he could never succeed in developing MareBrook"—were sufficient to state a takings claim. *Id.* at 565.

D. Laroe Moves To Intervene

1. Twelve days after the Second Circuit remanded the case to the District Court, and before the District Court took up the remand, Laroe notified the District Court of its intention to intervene pursuant to Federal Rule of Civil Procedure 24. Ltr. from J. Haspel, *Sherman v. Town of Chester*, No. 1:12-cv-00647-ER (S.D.N.Y. Mar. 31, 2015), ECF No. 16. Laroe moved to intervene as of right under Rule 24(a)(2) and, in the alternative, by permission under Rule 24(b). *See* Pet. App. 10a.

Laroe argued that it had "an interest relating to the property or transaction" at issue because it was the equitable owner of MareBrook. Fed. R. Civ. P. 24(a)(2); *see* Mot. to Intervene at 8, *Sherman*, No. 1:12-cv-00647-ER, ECF No. 20. Laroe further claimed that its interest would be impaired or

impeded if it were not allowed to intervene, and that Sherman could not adequately represent Laroe's interests. *See* Mot. to Intervene at 13-14. Laroe explained that Sherman is its "adversary" because each contends that the Town has taken its property without just compensation, and "the proceeds from any judgment or settlement may not be sufficient to satisfy" both of their interests. *See id.* at 14. Finally, Laroe argued that its motion was timely. Laroe first learned about Sherman's lawsuit while the Town's motion to dismiss was pending. *See id.* at 11. Laroe attempted to intervene at the first sensible opportunity, within days of when the motion to dismiss was finally resolved. *See id.* Moreover, the case was still in its infancy at that point, as "the parties ha[d] not even begun discovery." Pet. App. 12a. And the Town first answered the complaint last month. *See* Answer, *Sherman*, No. 1:12-cv-00647-ER, ECF No. 64 (Nov. 23, 2016).

2. The District Court denied Laroe's motion to intervene. Pet. App. 57a. The court did not decide whether Laroe satisfied the requirements for intervention under Rule 24. *See* Pet. App. 53a-59a & n.20. Instead, it concluded that Laroe's motion was "futile" because it "does not have standing to bring a takings claim" based on its interest under its purchase agreement with Sherman. Pet. App. 57a.[2]

[2] In the same order, the District Court denied the Town's motion to dismiss Sherman's First Amendment retaliation claim and granted the motion to dismiss Sherman's equal protection, due process, and state law claims. Pet. App. 39a, 46a, 51a, 53a. The District Court denied Sherman's motion for reconsideration on September 30, 2016. *See* Order, *Sherman*, No. 1:12-cv-00647-ER, ECF No. 62.

3. On interlocutory appeal, the Second Circuit vacated the District Court's decision because a party seeking to intervene as of right is not required to "independently have standing." Pet. App. 6a.

"[T]he question of standing in the federal courts is to be considered in the framework of Article III, which restricts judicial powers to cases and controversies." Pet App. 6a. Because "the existence of a case or controversy has been established in the underlying litigation," the Second Circuit explained that "there is no need to impose the standing requirement upon a proposed intervenor." Pet. App. 7a. The court further noted that this Court "has *sub silentio* permitted parties to intervene in cases that satisfy the 'case or controversy' requirement without determining whether those parties independently have standing." Pet. App. 8a (discussing *McConnell v. FEC*, 540 U.S. 93 (2003), *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010)). And although it acknowledged that some courts have reached a different conclusion, the Second Circuit explained that its longstanding approach "accords with that of the majority ... of sister circuits that have addressed this issue." Pet. App. 7a. For all these reasons, the court held that "[t]he District Court ... erred by denying Laroe's motion to intervene based on its failure to show it had Article III standing." Pet. App. 8a-9a.

For similar reasons, the Second Circuit rejected the Town's argument that affirmance was proper on the alternative ground that Laroe's motion "fails to state a claim against the Town." Pet. App. 9a. "[A]s long as it asserts the same legal theories and seeks the same relief as the existing plaintiff," the court

explained, "a party need not have a stand-alone claim of its own to intervene on the plaintiff's side of a case." *Id.* "That principle applies here" because Laroe "seeks relief that does not differ substantially from that sought by Sherman." Pet. App. 9a-10a.

Because an intervenor need not possess Article III standing, "the District Court should have instead focused its analysis on the requirements of Rule 24." Pet. App. 10a. The Second Circuit concluded that "the factual record before [it] [was] insufficiently developed at this stage to allow [it] to confidently resolve [the parties'] arguments" regarding Rule 24. Pet. App. 11a. It therefore remanded the case to the District Court "to determine in the first instance if Laroe satisfies the requirements of Rule 24." *Id.*

REASONS FOR DENYING THE PETITION

I. THE QUESTION PRESENTED IS NOT SIGNIFICANT ENOUGH TO WARRANT THIS COURT'S REVIEW

Petitioner cites numerous cases that discuss whether intervenors participating in a lawsuit as of right must have Article III standing. Although language in those cases, viewed in isolation, points in different directions, Petitioner's own authorities confirm that these differences seldom actually determine an entity's ability to intervene. This Court should not grant the writ to consider an issue of such limited significance.

A. Some Of Petitioner's Cases Do Not Involve The Question Presented

Petitioner relies on language from several cases that do not present the question Petitioner asks this

Court to review—because there was no valid case or controversy between the named parties, because intervention was not at issue at all, or because a party sought to intervene on a basis other than Rule 24(a).

Some cases did not address the question presented—whether an intervenor must have Article III standing if "*there is a valid case or controversy between the named parties*" (Pet. i) (emphasis added)—because the named parties either settled their dispute before intervention, *see Bond v. Uteras*, 585 F.3d 1061, 1068 (7th Cir. 2009); *Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324, 1327-28 (11th Cir. 2007) (per curiam), or they chose not to appeal an adverse decision, *see Planned Parenthood of Mid-Mo. & E. Kansas, Inc. v. Ehlmann*, 137 F.3d 573, 576 (8th Cir. 1998); *Yniguez v. Arizona*, 939 F.2d 727 (9th Cir. 1991); *see also Perry v. Schwarzenegger*, 630 F.3d 898, 902 (9th Cir. 2011) (per curiam) (intervenors sought to defend constitutionality of statute on appeal where defendant declined to do so). There was thus no continuing case or controversy between the original parties. In that situation, courts agree that an intervenor's right to participate in the suit "is contingent upon a showing by the intervenor that he fulfills the requirements of Art. III." *Diamond v. Charles*, 476 U.S. 54, 68 (1986); *see Holllingsworth v. Perry*, 133 S. Ct. 2652, 2662 (2013) (requiring intervenors to establish standing because they were "[t]he only individuals who sought to appeal" adverse order); *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736 (2016) (same); *Dillard*, 495 F.3d at 1330; *Bond*, 585 F.3d at 1071; *Planned Parenthood*, 137 F.3d at 576-77; *Yniguez*, 939 F.2d at 731.

The question whether intervenors must possess standing was likewise not presented in *Tarsney v. O'Keefe*, 225 F.3d 929 (8th Cir. 2000), which did not involve intervention at all. *Tarsney* addressed the standing of legislators as *plaintiffs*. *See id.* at 933-34, 939.

Finally, some of the cases that Petitioner cites are inapposite because they involved motions to intervene on the basis of provisions other than Rule 24(a). *See* Mot. to Intervene Out of Time at 1, *Agric. Retailers Ass'n v. U.S. Dep't of Labor*, 837 F.3d 60 (D.C. Cir. 2016) (No. 15-1326), Dkt. No. 20 (intervention under Fed. R. App. Proc. 15); *King v. Governor of New Jersey*, 767 F.3d 216, 246 (3d Cir. 2014) (intervention under Fed. R. Civ. P. 24(b)); *see also City of Chicago v. FEMA*, 660 F.3d 980, 986 (7th Cir. 2011) (declining to decide whether entities "were entitled to intervene as a matter of right" because "they should have been permitted to intervene under [Rule] 24(b)").

B. Even When The Question Presented Is At Issue, It Seldom Affects An Entity's Ability To Intervene

Even when it is fairly presented, the question on which Petitioner seeks certiorari is seldom dispositive of intervention. In some of Petitioner's cases, an entity could not intervene regardless of whether it possessed standing because it could not satisfy Rule 24(a)'s separate criteria. In other cases, it could intervene even if it lacked standing on its own because, as in *McConnell*, it sought the same relief as a party that had standing. Finally, the answer to the question presented is insignificant in many cases

because an entity that satisfies Rule 24(a)'s interest requirement will generally also satisfy Article III.

1. In several cases, intervention would have been denied regardless of Article III standing because the proposed intervenor could not satisfy Rule 24(a). *See San Juan Cty. v. United States*, 503 F.3d 1163, 1207 (10th Cir. 2007) (en banc) (denying intervention based on adequate representation); *Solid Waste Agency v. U.S. Army Corps of Eng'rs* 101 F.3d 503, 508 (7th Cir. 1996) (same); *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (same); *United States v. Metro St. Louis Sewer Dist.*, 569 F.3d 829, 838-39 (8th Cir. 2009) (denying intervention based on lack of adequate interest); *Bethune Plaza Inc. v. Lumpkin*, 863 F.2d 525, 531 (7th Cir. 1988) (denying intervention based on adequate representation and lack of impairment of interest); *Keith v. Daley*, 764 F.2d 1265, 1270 (7th Cir. 1985) (denying intervention based on adequate representation); *see also In re Idaho Conservation League*, 811 F.3d 502, 515 (D.C. Cir. 2016) (denying intervention for lack of standing but noting that intervenors also failed "to show the necessary impairment to their interests"); *Deutsche Bank Nat'l Tr. Co. v. FDIC*, 717 F.3d 189, 194 (D.C. Cir. 2013) (intervenors would fail Rule 24(a)(2)'s interest requirement "[e]ven if [they] enjoyed Article III standing"); *S. Christian Leadership Conference v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984) (per curiam) (noting that denial of motion to intervene would have been appropriate based on untimeliness). In each of these situations, an entity's standing ultimately had no effect on its ability to intervene.

2. By Petitioner's own account, the question presented was "irrelevant" in other cases because the intervenor and a named party raised the same arguments or sought the same relief. Pet. 25; *see King*, 767 F.3d at 246; *Ruiz v. Estelle*, 161 F.3d 814, 833 (5th Cir. 1998); *Steward v. Abbott*, -- F. Supp. 3d --, No. 5:10-CV-1025-OLG, 2016 WL 4771311, at *2 (W.D. Tex. May 17, 2016). Under those circumstances, a court "need not address the standing of the intervenor[s]." *McConnell*, 540 U.S. at 233.

3. And in still other cases, the question presented did not affect an entity's ability to intervene because an intervenor who satisfies Rule 24(a) typically also satisfies Article III. In fact, because it would be an "unusual case[] where an intervenor could satisfy the interest requirement of Rule 24(a)(2) without having a stake in the controversy needed to satisfy Article III," the First Circuit has "see[n] no reason to concern [itself] with the abstract question whether an intervenor-defendant must show some separate form of standing." *Cotter v. Mass. Ass'n of Minority Law Enf't Officers*, 219 F.3d 31, 34 (1st Cir. 2000).

a. Among the courts that require intervenors to possess standing, several cases recognize that an intervenor's "constitutional standing is alone sufficient to establish that the [intervenor] has 'a[] [Rule 24(a)] interest relating to the property or transaction which is the subject of the action.'" *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 24(a)(2)); *see United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1146 (D.C. Cir. 2009) (per curiam) ("[B]y demonstrating Article III standing, the intervenors

adduce a sufficient interest [under Rule 24(a)(2)]."); *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1024-25 (8th Cir. 2003) (interest sufficient to satisfy Article III and Rule 24(a)(2)); *Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 13 (D.D.C. 2016) ("[F]or the same reasons as to why the Menominee have standing to intervene, the Court finds that the Menominee have a 'legally protected' interest in this action."). *But see City of Chicago*, 660 F.3d at 984-86 (intervenors' interest likely satisfied both Article III and Rule 24(a), but Article III standing is not always sufficient to satisfy Rule 24(a)'s interest requirement).

b. Even in courts that do not require intervenors to establish standing, most cases that allowed intervention did so based on a Rule 24(a) interest that likely would satisfy Article III as well.

For example, in *Stone v. First Union Corp.*, 371 F.3d 1305 (11th Cir. 2004), a former employee sued a bank for age discrimination. The court allowed other former employees who also alleged age discrimination to intervene. *See id.* at 1307, 1309. In *Jansen v. City of Cincinnati*, 904 F.2d 336 (6th Cir. 1990), white applicants who had not been hired by a fire department challenged a consent decree that established an affirmative action program governing the fire department's hiring and promotion decisions. *See id.* at 338. Black firefighters whose jobs and future promotions were at stake were entitled to intervene to defend their "interest in continuing affirmative action under the consent decree." *See id.* at 342. And the farmers' organization that intervened in *Sierra Club v. Glickman*, 82 F.3d 106 (5th Cir. 1996) (per curiam), likewise had a concrete

and particularized interest in the disposition of that case. The Sierra Club's lawsuit against the U.S. Department of Agriculture (USDA) "ha[d] a direct impact upon" the farmers' conduct and "threaten[ed] their contracts with the USDA." *Id.* at 109. In each of these cases, the interests that courts found sufficient for intervention under Rule 24(a) would likely also satisfy Article III, if intervenors were required to show standing.

The Rule 24(a) interests at stake in other cases that Petitioner cites are similarly relevant to Article III. *See Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1251 (10th Cir. 2001) (permitting organizations to intervene to defend monument based on "their financial stake in the tourism the monument has created"); *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (intervenor had Rule 24(a) interest because, among other things, it was "regulated by at least three of the four statutory provisions challenged by plaintiffs"); *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1991) (non-marital children could intervene in wrongful-death action brought by their father's estate).

Petitioner suggests that these cases allowed intervention solely because of the potential for adverse stare decisis effects in the future. *See* Pet. 15-17. That is wrong. Whatever stray language those decisions may contain regarding the role of stare decisis, each intervenor had a concrete interest that faced actual or imminent impairment. Those entities likely would have been able to satisfy Article III if they had been required to do so.

II. THIS CASE IS A POOR VEHICLE FOR RESOLVING THE QUESTION PRESENTED

In any event, this case is a poor vehicle because there are serious doubts whether the question presented will ultimately affect Respondent's ability to intervene.

This Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Va. Military Inst. v. United States*, 508 U.S. 946 (1993) (Scalia, J., regarding denial of certiorari); *see also* Stephen M. Shapiro, et al., SUPREME COURT PRACTICE § 4.18 (10th ed. 2013). Here, no court has finally determined whether Respondent is entitled to intervene. Both the District Court and the Second Circuit based their opinions on Article III standing, without deciding whether Respondent separately satisfied Rule 24. *See* Pet. App. 13a, 17a, 18a, 59a n.20. And the Second Circuit remanded the case for the District Court to make that determination in the first instance. Pet. App. 11a. To be sure, Respondent believes that it meets each of Rule 24(a)'s criteria. But if the lower courts disagree, resolving the question presented would have no effect on the outcome of this case. This Court's review is therefore premature.

The interlocutory posture of this case renders it a poor vehicle for another reason: Although the question presented focuses only on Rule 24(a) (*see* Pet. i), Respondent moved to intervene under both Rule 24(a) and Rule 24(b). *See* Pet. App. 10a, 53a. It is not unusual for courts to bypass Rule 24(a) and conclude that permissive intervention is warranted under Rule 24(b). *See, e.g.*, *City of Chicago*, 660 F.3d

at 986. And the District Court may do just that on remand. Indeed, the District Court initially denied Respondent's motion in its entirety for lack of standing, *see* Pet. App. 57a, and the Second Circuit remanded for "the District Court to determine in the first instance if Laroe satisfies the requirements of *Rule 24*," Pet. App. 11a (emphasis added).

The question presented is also unlikely to be outcome-determinative because, even if Respondent were required to demonstrate standing, it could easily do so. There is no question that the owner of property has standing to challenge its unconstitutional taking. *See, e.g., Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1012-13 (1992). And Respondent has an equitable ownership in the property based on its purchase agreement with Sherman. New York law has long recognized that "[t]he execution of a contract for the purchase of real estate and the making of a partial payment gives the contract vendee equitable title to the property." *Carnavalla v. Ferraro*, 281 A.D.2d 443, 443 (N.Y. App. Div. 2001); *see New York Cent. & Hudson River R.R. Co. v. Cottle*, 187 A.D. 131, 144 (N.Y. App. Div. 1919), *aff'd* 129 N.E. 896 (N.Y. 1920); *Bean v. Walker*, 95 A.D.2d 70, 72 (N.Y. App. Div. 1983). Moreover, an equitable owner enjoys the full rights of ownership. *See In re Site for Jefferson Houses*, 117 N.E.2d 896, 898 (N.Y. 1954); *Williams v. Haddock*, 39 N.E. 825, 826 (N.Y. 1895); *Bean*, 95 A.D.2d at 72.

These vehicle problems are just as "severe" as those in past petitions raising the question presented. Pet. 25; *cf.* U.S. Br. in Opp. at 6, *Elko Cty. v. Wilderness Soc'y*, 556 U.S. 1147 (2009) (No. 08-571), 2009 WL 390030 (intervenor satisfied both Article III

and Rule 24(a)); Br. in Opp. at 5, *Standing Together to Oppose Partial-Birth-Abortion v. Northland Family Planning Clinic, Inc.*, 552 U.S. 1096 (2008) (No. 07-291), 2007 WL 3322288 (entity failed to satisfy Rule 24(a)). This Court denied certiorari in those cases, and it should do the same here.

III. THE DECISION BELOW IS CORRECT

This Court's review is also unwarranted because the Second Circuit's conclusion—which accords with the majority of the circuits that have considered it—is correct.

1. Article III limits the "judicial power" of federal courts to the resolution of "cases" and "controversies." U.S. Const. art. III, § 2. "The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014); *see also, e.g.*, *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146 (2013) ("One element of the case-or-controversy requirement is that plaintiffs must establish that they have standing to sue."). Requiring a plaintiff to establish that he has standing—i.e., that he "suffered an injury in fact," "that is fairly traceable to the challenged conduct of the defendant," and "that is likely to be redressed by a favorable judicial decision"—"confines the federal courts to a properly judicial role." *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016); *see also, e.g.*, *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471-75 (1982).

Importantly, "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 53 n.2 (2006); *see Massachusetts v. E.P.A.*, 549 U.S. 497, 518 (2007) ("Only one of the petitioners needs to have standing to permit us to consider the petition for review."). Thus, upon finding that at least one party "has demonstrated standing" with respect to a particular claim, this Court generally does not consider whether other parties would also have standing to assert the same claim. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977); *see, e.g., Horne v. Flores*, 557 U.S. 433, 446 (2009); *Massachusetts*, 549 U.S. at 518; *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 826 n.1, (2002); *U.S. Dep't of Labor v. Triplett*, 494 U.S. 715, 719 (1990); *Clinton v. City of N.Y.*, 524 U.S. 417, 431 n.19 (1998); *Bowen v. Kendrick*, 487 U.S. 589, 620 n.15 (1988); *Pennell v. City of San Jose*, 485 U.S. 1, 8 n.4 (1988); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981). That is because the presence of just one plaintiff with standing "assures that an admittedly justiciable controversy is ... before the Court." *Dir., Office of Workers' Comp. Programs v. Perini N. River Assocs.*, 459 U.S. 297, 305 (1983).[3]

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[3] Petitioner's reliance on general language describing the standing doctrine is misplaced because none of the cases Petitioner cites requires multiple *parties* to establish standing with respect to a single claim. *See* Pet. 19-20. And *Lewis v. Casey*, 518 U.S. 343 (1996), recognizes only that at least one party must establish standing with respect to each *claim*. *Id.*

The participation of intervenors who cannot "independently ... satisfy Article III" no more "destroy[s] jurisdiction already established" than the presence of additional plaintiffs. *Ruiz*, 161 F.3d at 832. That is, "[i]f the plaintiff that initiated the lawsuit has Article III standing, a 'case' or 'controversy' exists regardless of whether a subsequent intervenor has such standing." *King*, 767 F.3d at 245. This Court recognized as much in *McConnell*, when it declined to consider whether an intervenor had standing because the intervenor's "position ... [was] identical" to that asserted by a party with standing. 540 U.S. at 233. *Cf. Arizonans for Official English v. Arizona*, 520 U.S. 43, 66-67 (1997) (declining to address intervenors' standing without first "inquir[ing] ... whether [the] originating plaintiff ... still has a case to pursue"). And even courts that adopt Petitioner's contrary view recognize "the tension between requiring standing of prospective plaintiff intervenors while at the same time finding Article III satisfied when only one party has standing." *Jones v. Prince George's Cty.*, 348 F.3d 1014, 1018 (D.C. Cir. 2003).

2. Here, there is no dispute that Sherman has standing to pursue the takings claim. And given that Respondent "asserts the same legal theories and seeks the same relief as [Sherman]," Pet. App. 9a, Sherman's standing is sufficient to "assure[]" there is

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(continued...)

at 358 n.6 ("[T]he right to complain of *one* administrative deficiency [does not] automatically confer[] the right to complain of *all* administrative deficiencies[.]").

"an admittedly justiciable controversy," *Perini*, 459 U.S. at 305. *See also McConnell*, 540 U.S. at 233; Reply Br. at 12, *Laroe Estates Inc. v. Town of Chester*, 828 F.3d 60 (2d Cir. 2016) (No. 15-1086-cv), ECF No. 60-1 ("Laroe does not suggest that the Town's exposure to Laroe is independent from its exposure to Sherman. Laroe recognizes that there is one tract of land and one taking.").

Petitioner incorrectly argues that Respondent's proposed intervention has "prolonged" or altered the course of this litigation. Pet. 21. The longevity of this case is attributable to Sherman's vigorous defense against Petitioner's multiple efforts to dismiss his claims. After the District Court initially dismissed Sherman's takings claim on ripeness grounds, Sherman successfully appealed to the Second Circuit. *See Sherman*, 752 F.3d at 557. And when Petitioner moved to dismiss Sherman's remaining claims on remand, Sherman again resisted. *See* Mem. in Opp. to Mot. to Dismiss, *Sherman*, No. 1:12-cv-00647-ER, ECF No. 33. Sherman continues to pursue this case in the District Court today, even though the takings claim is one of only two remaining claims.[4] *See* Pet. App. 24a, 37a-39a.

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[4] Whether Sherman has fewer resources than Respondent to devote to this litigation has no bearing on Sherman's standing to pursue the takings claim. *See* Pet. 20-21; *see also* Pet. 13a. Nor does Sherman's apparent attempt to extract an incentive payment from Respondent, *see* Ltr. from J. Haspel at 2, *Sherman*, No. 1:12-cv-00647-ER, ECF No. 16, mean that Sherman has abandoned the takings claim. *See* Pet. 20-21.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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